Supreme Court, U.S.
FILED
FEB 6 - 2004
OFFICE OF THE CLERK

(4)

No. 03-824

IN THE

Supreme Court of the United States

CINDY L. NAETHING,

Petitioner,

v.

LEE COVINGTON, Director;
AMERICAN GENERAL LIFE AND ACCIDENT
INSURANCE COMPANY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY

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STATEMENT PURSUANT TO RULE 29.6

Respondent, American General Life and Accident Insurance Company is a wholly owned subsidiary of the American General Corporation which is a wholly owned subsidiary of American International Group, Inc.

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BASIS FOR JURISDICTION

Petitioner is seeking review of a judgment of the United States Court of Appeals for the Sixth Circuit. The Petitioner incorrectly states that the Court's jurisdiction is invoked under 28 U.S.C. § 1257(2). Read liberally, Petitioner invokes the jurisdiction of this Honorable Court under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

On or about September 30, 1991, American General Life and Accident Insurance Company ("AGLA") paid to Sandra Hampton, Martin Hampton's widow and designated beneficiary, the $15,048.43 death benefit under Martin Hampton's ("Hampton") AGLA life insurance policy. (R#1, p. 8 – Exhibit III; R#11 – Exhibits H, I).[1]

On March 21, 1995, Petitioner, Cindy L. Naething, filed an action claiming death benefits under Hampton's AGLA life insurance policies in the Court of Common Pleas, Richland County Ohio. (R#11 – Exhibit F). On July 11, 1995, the state court granted summary judgment to AGLA, finding that Petitioner had received all discovery to which she was entitled and that she was not entitled to any benefits under Hampton's life insurance policies. (R#11 – Exhibit A). On March 29, 1996, Petitioner's Appeal of that judgment was dismissed by the Court of Appeals, Richland County, Ohio. (R#11 – Exhibit B).

More than five years later, on August 28, 2001, Petitioner commenced an action in the United States District Court, Northern District of Ohio, naming AGLA as a defendant,

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1. Pursuant to Sixth Circuit Rule 28(d) all "R#" numerical designations refer to filings in the District Court's record.

along with the Director of the Ohio Department of Insurance. Petitioner's Complaint restyled her previously adjudicated state law claims as violations of 42 U.S.C. § 1983 and 42 U.S.C. § 1985(3). (R#1). Petitioner sought to compel AGLA to produce the two AGLA insurance policies held by Hampton and related cancelled checks. (R#1). Once again, Petitioner claimed that she was entitled to death benefits under one or both of Hampton's policies. (R#1). On October 19, 2001, AGLA moved to dismiss the Complaint. (R#11).

On October 24, 2001, the District Court issued an order and judgment entry dismissing Petitioner's Complaint against AGLA. (R#12).[2] The District Court held that the doctrines of collateral estoppel and res judicata barred Petitioner from re-litigating issues previously decided by the Ohio courts, and that Petitioner's claims under 42 U.S.C. §§ 1983 and 1985 were barred by the two-year statute of limitations. Further, the District Court held that AGLA is not a state actor, and cannot be sued under § 1983. The District Court also noted that Petitioner's allegations of conspiracy were unsupported by material fact, entirely conclusory, and insufficient at law to state a claim under § 1983. "Moreover," the Court observed, "even read most broadly in her favor, the Plaintiff's allegations fail to show that any right under the Constitution or laws of the United States has been violated." (R#12).

On October 29, 2001, Petitioner filed Notice of Appeal to the Sixth Circuit. (R#15).

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2. The copy of the Order and Judgment entry of the District Court dated October 24, 2001 at Appendix A to the Petition is missing two entire paragraphs. A true, accurate, and complete copy is appended hereto as Appendix A for this Court's reference.

On November 1, 2001, the District Court, recognizing that Petitioner had not had an opportunity to respond to AGLA's Motion to Dismiss, entered an Order vacating its entry of October 24, 2001 as to the closing of the case. The District Court further ordered Petitioner to file a response to AGLA's Motion to Dismiss by November 19, 2001. (R#15).

On November 14, 2001, Petitioner filed a Motion to Recuse asking that Judge Carr recuse himself based upon his Order of October 24, 2001. (R#17). On November 16, 2001, Petitioner filed her Response to AGLA's Motion to Dismiss. (R#19).

On December 14, 2001, Judge Carr denied Petitioner's Motion to Recuse, and granted AGLA's Motion to Dismiss for the reasons stated in his Order filed October 24, 2001. (R#20, #21, #22).

On August 20, 2003, the Sixth Circuit filed its per curiam opinion affirming the judgment of the District Court "upon the reasoning set out by the court in its opinion and order entered October 24, 2001."[3] The Sixth Circuit issued its mandate for this case on September 19, 2003.

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3. Appendix J to the Petition is not a true and accurate copy of the Sixth Circuit's per curiam opinion dated August 20, 2003. In fact, Appendix J materially misstates the opinion of the Sixth Circuit. The Sixth Circuit's Opinion states in pertinent part:

> Having studied the record on appeal and the briefs of the parties, we are not persuaded that the District Court erred in dismissing Plaintiff's case. Because the district court fully articulated its reasons for dismissal, the issuance of a detailed opinion by this court would be duplicative and serve no purpose. Accordingly, we affirm the judgment of the district court upon the reasoning set out by the court in its opinion and order entered October 24, 2001.

A true, accurate, and complete copy of the Sixth Circuit's Opinion dated August 20, 2003 is appended hereto as Appendix B.

REASONS FOR DENYING THE PETITION

The eight questions presented by the Petition do not identify any legal error in the Sixth Circuit's opinion, nor do they set forth any compelling reason why this Court should grant the Petition. Because Petitioner disagrees with the state and federal court rulings below, she alleges that the participating judges are "subverting the legal rights and protections guaranteed to all citizens," and "using their judicial positions to inflict harm." (Pet., at 28). Read liberally, the Petition asks this Court to exercise its supervisory power to correct what Petitioner perceives as the Sixth Circuit's departure from the accepted and usual course of judicial proceedings, and its approval of similar conduct by the District Court.

In dismissing Petitioner's claims under 42 U.S.C. §§ 1983 and 1985, the District Court noted that Petitioner's underlying claims to documents and to insurance benefits had already been decided by the Ohio courts, and that the doctrines of collateral estoppel and res judicata barred her from relitigating those claims. Further, the District Court held that Petitioner's civil rights claims were barred by the applicable statute of limitations. Finally, the Court held that because AGLA is not a state actor, AGLA cannot be sued under § 1983.

The Sixth Circuit adopted the reasoning of the District Court's opinion dated October 24, 2001, and affirmed its dismissal by applying settled law to the facts. The Sixth Circuit's decision was proper in all respects, and does not conflict with any decision of this Court, nor of any other court of appeals. Respondent respectfully urges this Court to deny the Petition for Writ of Certiorari.

I. The Sixth Circuit Correctly Affirmed The District Court's Determination That Petitioner's Claims Are Barred By The Doctrines Of Collateral Estoppel And Res Judicata.

On July 11, 1995, the Court of Common Pleas, Richland County, Ohio, determined that Petitioner had received all of the discovery from AGLA that she was entitled to, and that she was not entitled to any benefits under Hampton's life insurance policies. The Court of Appeals, Richland County, dismissed Petitioner's appeal from that judgment on March 29, 1996. The adverse decisions of the Ohio courts on Petitioner's underlying claims to documents and to life insurance benefits are res judicata. Petitioner is estopped from re-litigating these issues. Because the Ohio courts determined that Petitioner had no underlying right to the documents and benefits she was seeking, the District Court properly determined that Petitioner's civil rights claims, based upon the deprivation of those documents and benefits, were groundless and should be dismissed.

II. The Sixth Circuit Correctly Affirmed The District Court's Determination That The Two-Year Statute Of Limitations In Ohio Bars Petitioner's Claims Under 42 U.S.C. §§ 1983 And 1985.

In *Wilson v. Garcia*, the Court construed the borrowing principle of 42 U.S.C. § 1988 to direct the selection, in each state, of the most appropriate statute of limitations for all claims under 42 U.S.C. § 1983. *Wilson v. Garcia*, 471 U.S. 261, 275, 105 S. Ct. 1938, 1947, 85 L. Ed. 2d 254, 266 (1985). Claims under § 1983 are best classified or characterized as personal injury actions for purposes of selecting the most appropriate statute of limitations. *Id.* at 276. The Sixth Circuit

has held that the two-year statue of limitations for bodily injury, contained in Ohio Revised Code § 2305.10, is the most appropriate statute of limitations for § 1983 actions arising in Ohio. *Browning v. Pendleton*, 869 F.2d 989, 992 (6th Cir. 1989). The applicable statute of limitations in Ohio for claims under 42 U.S.C. § 1985 is also two years. *Walker v. City of Lakewood*, 742 F. Supp. 429, 430-431 (N.D. Ohio 1990) *cited in Ashiegbu v. Purviance*, 74 F. Supp. 2d 740, 747 (S.D. Ohio 1998) *cert. dismissed*, 529 U.S. 1001, 120 S. Ct. 1287, 146 L. Ed. 2d 215 (2000).

Petitioner's Complaint, filed in the District Court on August 23, 2001, acknowledged that AGLA notified Petitioner, by letter dated May 27, 1992, that it had paid the death benefits under Hampton's life insurance policy to Sandra Hampton on September 30, 1991. (R#1 – Exhibit III; R#19, p. 2). Petitioner's cause of action, if any, accrued no later than May 27, 1992. *Sevier v. Turner*, 742 F.2d 262, 272 (6th Cir. 1984) ("The statute of limitations begins to run when the plaintiff knows or has reason to know of the injury which is the basis of his action.")

The latest date mentioned anywhere in Petitioner's Complaint is April 1994. (R#1 – Exhibit III (A)). Accordingly, the Sixth Circuit correctly determined that Ohio's two-year statute of limitations, applicable to civil rights actions under 42 U.S.C. §§ 1983 and 1985, bars Petitioner's claims against AGLA. Accordingly, the Sixth Circuit properly affirmed the judgment of the District Court dismissing Petitioner's Complaint.

III. The Sixth Circuit Correctly Affirmed The District Court's Holding That AGLA Is Not A State Actor And Cannot Be Sued Under 42 U.S.C. § 1983.

To state a claim for relief in an action brought under 42 U.S.C. § 1983, Petitioner must establish that she was deprived of a right secured by the Constitution or laws of the United States and that the alleged deprivation was committed under color of state law. *American Manufacturers Mutual Insurance Co. v. Sullivan*, 526 U.S. 40, 50, 119 S. Ct. 977, 985, 43 L. Ed. 2d 130, 144 (1999).

AGLA, a private insurer, did not act under color of state law when it paid life insurance benefits to Hampton's designated beneficiary. Indeed, Petitioner never alleged that AGLA acted under color of state law, nor that AGLA had deprived her of any federal right. Petitioner simply repeats her belief that she was the rightful beneficiary, and that she is entitled to benefits under the insurance contract. As noted in the Sixth Circuit's per curiam opinion, "The Ohio court ruled in 1995 that Plaintiff received all the discovery to which she was entitled and that she was not entitled to benefits under the insurance policies." (Pet., App. J at 13j).

Insurance companies are regulated by the state. It is well settled in the law, however, that "the mere fact a business is subject to state regulation does not by itself convert its action into that of the state." *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 350, 95 S. Ct. 449, 42 L. Ed. 2d 477, 483 (1974) *cited in American Manufacturers Mutual Insurance Co. v. Sullivan*, 526 U.S. at 52, 119 S. Ct. at 986, 143 L. Ed. 2d at 144 (1999). Private insurers are not held to constitutional standards unless "there is a sufficiently close nexus between the state and the challenged action of the regulated entity so

that the action of the latter may be fairly treated as that of the state itself." *Id.* "Actions taken by private entities with the mere approval or acquiescence of the state is not state action." *Id.*

Petitioner has not alleged that the State of Ohio had any involvement, whatsoever, in AGLA's decision to pay Sandra Hampton the death benefits under Hampton's AGLA life insurance policies. AGLA did not act under color of state law when it fulfilled its private contractual obligation to pay benefits to Hampton's designated beneficiary upon his death. Further, Petitioner has failed to demonstrate that AGLA's payment of benefits deprived her of any federal right. Accordingly, the Sixth Circuit correctly affirmed the District Court's holding that AGLA was not a state actor, and could not be sued under 42 U.S.C. § 1983.

CONCLUSION

For all the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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